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CORE BRANDS, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

(WESTERN DIVISION)

CORE BRANDS, LLC, Plaintiff, v. NEW AUDIO VIDEO D/B/A NEWAUDIOVIDEO.COM and JOHN DOE, Defendants.	Case No. **COMPLAINT FOR:** **1) TRADEMARK INFRINGEMENT - UNFAIR COMPETITION** **2) TRADEMARK COUNTERFEITING** **3) VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 *et seq.*** **DEMAND FOR JURY TRIAL**

Plaintiff Core Brands, LLC ("Plaintiff" or "Core Brands") by and through its undersigned counsel, complains of Defendants New Audio Video d/b/a newaudiovideo.com and John Doe (together, "Defendant" or "New Audio Video") conduct and alleges upon information and belief as follows:

NATURE OF THIS ACTION

1. This is an action for trademark infringement including unfair competition and counterfeiting under the Lanham Act, 15 U.S.C. § 1051, *et seq*., as well as unfair trade practices under Cal. Bus. & Prof. Code §§ 17200, *et seq*., arising from New Audio Video's improper sales of Core Brands's products.

2. As a result of New Audio Video's actions, Core Brands has suffered and continues to suffer a loss of the enormous goodwill that it has created in its trademarks as well as lost profits from the sale of products. This action seeks permanent injunctive relief and damages for New Audio Video's willful infringement of Core Brands's intellectual property rights.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b), as these claims arise under the Trademark Laws of the United States.

4. This Court also has supplemental jurisdiction over Core Brands's unfair and deceptive trade practices claim under 28 U.S.C. § 1367(a).

5. New Audio Video is subject to personal jurisdiction in this forum because it is located in this forum; New Audio Video has caused injury to Core Brand's trademarks in the State of California and this District; because New Audio Video practices the unlawful conduct complained of herein, in part, within the State of California and this District; because New Audio Video regularly conducts or solicits business within the State of California and this District; because New Audio Video regularly and systematically directs electronic activity into the State of California and this District with the manifest intent of engaging in business within the State of

California and this District, including the sale and/or offer for sale of products to Internet users within the State of California and this District, as well as, upon information and belief, entry into contracts with residents of the State of California and this District through the sale of items through various online retail platforms.

6. Similarly, because some of New Audio Video's wrongful acts involved the offering for sale and sale of products that infringe Core Brands's trademarks, venue is proper in this judicial district under 28 U.S.C. § 1391.

INTRADISTRICT ASSIGNMENT

7. Pursuant to Local Civil Rule 3-2(c), this case falls within an "excepted category" as an "Intellectual Property Action" and shall be assigned on a district-wide basis.

PARTIES

8. Plaintiff Core Brands, LLC is a California corporation having its principal place of business in Petaluma, California. Core Brands delivers technology-driven products and solutions to end-users and its channel partners in residential and commercial markets in the United States. Core Brands's audio, power management and control products include, but are not limited to, ATON, BlueBOLT, ELAN, Furman, Korus, Niles, Panamax, Proficient, SpeakerCraft, Sunfire, and Xantech (the "Core Brand Products").

9. New Audio Video is an unauthorized reseller of Core Brands Products. New Audio Video resells a variety of electronics equipment and other products through online retail spaces including the domain www.newaudiovideo.com (the "New Audio Video Website"). The New Audio Video Website lists its physical address as 3699 Wilshire Boulevard, Los Angeles, CA 90010 and its e-mail addresses and telephone number as info@newaudiovideo.com, newaudiovideo@gmail.com, and (888) 532-8808, respectively. The New Audio Video Website directs customers to contact it by submitting a message directly on the New Audio Video Website. The registration information for the New Audio Video Website lists the following registrant address:

P.O. Box 0823-03411, Republic of Panama, 00000.[1] The seller's actual identity is presently unknown to Core Brands.

10. John Doe is the individual or entity that operates and does business as New Audio Video including through the New Audio Video Website. The identity of John Doe is unknown to Core Brands at this time. Core Brands believes that information obtained in discovery will lead to the identification of John Doe. Core Brands will amend this Complaint to include the name and residence of John Doe once ascertained. For purposes of this Complaint, all allegations and claims asserted against New Audio Video are asserted against the John Doe as well.

FACTS GIVING RISE TO THIS ACTION

A. Core Brands's Trademark Usage

11. The U.S. Patent and Trademark Office ("PTO") has issued several registrations for marks owned by Core Brands for use with audio and video products (hereinafter the "Core Brands Marks"). The Core Brands Marks include, but are not limited to, the following:

Trademark	Reg. No.	Reg. Date	First Use in Commerce
ATON	3528204	11/04/2008	11/2007
NILES	2797159	12/23/2003	1/5/1993

[1] Defendant's registration information is associated with a number of "scam" online websites.

NILES	2788662	12/23/2003	1/5/1993
NILES	2720886	6/3/2003	1/5/1993
SpeakerCraft	3095367	5/23/2006	4/4/2005
SPEAKERCRAFT	3095378	5/23/2006	2/1/1979
BlueBOLT	3839084	8/24/2010	3/8/2010
ELAN	2801799	1/6/2004	9/1/1995
FURMAN	3219620	3/20/2007	7/1/1974

12. True and correct copies of printouts from the PTO's Trademark Electronic Search System evidencing these registrations are attached hereto as Exhibit 1.

13. The Core Brands Marks have been in continuous use since at least 2010, including some since 1979.

14. The Core Brands Marks are incontestable pursuant to 15 U.S.C. § 1065.

15. These registrations are in full force and effect.

16. Core Brands has also acquired common law rights in the use of the Core Brands Marks throughout the United States.

17. Core Brands' federal trademark registrations were duly and legally issued, are valid and subsisting, and constitute *prima facie* evidence of Core Brands' exclusive ownership of the Core Brands Marks.

18. Core Brands has invested many millions of dollars and has expended

significant time and effort in advertising, promoting and developing the Core Brands Marks throughout the United States and the world. As a result of such advertising and promotion, Core Brands has established substantial goodwill and widespread recognition in its Core Brands Marks, and those marks have become associated exclusively with Core Brands and its products by both customers and potential customers, as well as with the general public at large.

19. To create and maintain such goodwill among its customers, Core Brands has taken substantial steps to ensure that products bearing its Core Brands Marks are of the highest quality. As a result, the Core Brands Marks have become widely known and are recognized throughout the United States and the world as symbols of high quality products.

20. Core Brands sells products directly to customers through its network of authorized Core Brands dealers, including dealers located in this District.

21. Customers throughout the United States and the world recognize the Core Brands Marks, upon which they rely for high quality products and attentive customer service.

22. As a result of, *inter alia*, the care and skill exercised by Core Brands in the conduct of its business, the high quality of goods sold under the Core Brands Marks, and the extensive advertising, sale, and promotion by Core Brands of its branded products, the Core Brands Marks have acquired secondary meaning throughout the United States, including in the State of California.

B. New Audio Video's Infringing and Improper Conduct

23. New Audio Video utilizes online retail platforms, including the New Audio Video Website, to sell products that purport to be genuine Core Brands Products.

24. New Audio Video lists Core Brands Products and often uses copyrighted images in those listings.

25. In reselling Core Brands Products, New Audio Video has removed and/or

altered product serial numbers.

26. When a customer places an order for a Core Brands Product, New Audio Video often contacts her and states that the product is unavailable.

27. New Audio Video then offers that customer to purchase a similar product from another manufacturer.

28. In the last thirteen months, Core Brands has sent at least three letters via U.S. mail to New Audio Video demanding that they cease advertising, offering for sale, and selling Core Brands Products (the "C&D Letters"). Attached hereto as Exhibit 2 are true and accurate copies of the C&D Letters.

29. New Audio Video has not responded to any of the C&D Letters.

C. The Likelihood of Confusion and Injury Caused by New Audio Video's Actions

30. Removing and/or altering serial numbers on its products and/or the packaging of its products prevents Core Brands from being able to trace and identify those products. Such conduct interferes with Core Brands's ability to control the quality of products bearing the Core Brands Marks.

31. Additionally, removing and/or altering serial numbers voids any and all warranties offered by Core Brands, causing a customer to not receive a warranted product as she intended.

32. In addition, the sale of Core Brands Products with the use of the Core Brands copyrights and Marks is likely to cause confusion among consumers regarding Core Brands's sponsorship of, affiliation with, connection to, or approval of the products sold by New Audio Video.

33. The sale of Core Brands Products by unauthorized resellers further interferes with Core Brands' ability to control the quality of products bearing the Core Brands Marks.

34. As a result of New Audio Video's actions, Core Brands is suffering a loss of the enormous goodwill that it has created in the Core Brands Marks and is losing

profits from lost sales of genuine products.

35. New Audio Video is likely to continue to commit the acts complained of herein, and, unless restrained and enjoined, will continue to do so, causing Core Brands irreparable harm.

COUNT I

Trademark Infringement - Unfair Competition

36. Core Brands hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

37. The acts of New Audio Video, as alleged herein, constitute the use in commerce, without the consent of Core Brands, of a reproduction, counterfeit, copy or colorable imitation of the Core Brands Marks in connection with the sale, offering for sale, distribution, or advertising of goods, which has caused, is likely to cause, and continues to cause confusion or mistake, and to deceive consumers, in violation of 15 U.S.C. § 1125(a).

38. New Audio Video's removal and alteration of serial numbers and bait-and-switch practices are willful and intentional.

39. As a direct and proximate cause of New Audio Video's actions, Core Brands has suffered damages.

40. Such conduct on the part of New Audio Video has caused and will continue to cause irreparable injury and harm to Core Brands.

COUNT II

Trademark Counterfeiting

41. Core Brands hereby realleges each and every allegation of the Complaint contained in the foregoing paragraphs as though fully set forth in this claim for relief.

42. New Audio Video's use in commerce of the Core Brand Marks in connection with the sale, offering for sale, distribution, or advertising of the New Audio Video Website is likely to cause, has caused, and does cause, and is willful and

intended to cause confusion, mistake, and deception amongst consumers and constitutes trademark infringement in violation of 15 U.S.C. § 1114(1)(a).

43. New Audio Video's sale of Core Brands Products and/or packaging of its products with removed and/or altered serial numbers is likely to cause, has caused, and does cause, and is willful and intended to cause confusion, mistake, and deception amongst consumers and constitutes trademark counterfeiting under 15 U.S.C. § 1114(1)(b).

44. As a direct and proximate result of New Audio Video's actions, Core Brands has suffered substantial damages and irreparable injury. Core Brands is entitled to an injunction and to recover New Audio Video's profits, all damages sustained by Core Brands, treble those profits or damages, and the cost of this action, plus interest, under 15 U.S.C. § 1117(a) and (b), which amounts are yet to be determined.

45. As a direct and proximate result of New Audio Video's acts of willful trademark counterfeiting, Core Brands is entitled to elect statutory damages, under 15 U.S.C. § 1117(c)(2), of $2,000,000.00 per counterfeit mark per type of goods or services sold, offered for sale, or distributed by New Audio Video.

COUNT III

Violation of Business and Professions Code §§ 17200 *et seq.*

46. Core Brands hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

47. New Audio Video conducts business within the State of California.

48. The California Unfair Competition Law, codified at Business and Professions Code sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business act or practice.

49. New Audio Video's practice of removing and/or altering serial numbers on Core Brands Products and/or packaging constitutes unlawful, unfair, and/or fraudulent business acts and practices within the meaning of California Business &

Professions Code §§ 17200, *et seq.*

50. New Audio Video's use of illegal bait-and-switch tactics to lure customers in with the unauthorized and false advertisement of Core Brands Products constitutes unlawful, unfair, and/or fraudulent business acts and practices within the meaning of California Business & Professions Code §§ 17200, *et seq.*

51. New Audio Video's misconduct has a tendency and likelihood to deceive members of the public.

52. The foregoing acts and practices have caused substantial harm to Core Brands.

53. As a direct and proximate cause of the unlawful, unfair, and fraudulent acts and practices of New Audio Video, Core Brands has lost money and suffered injury in fact and damage in the form of lost sales revenue, fees, and other costs.

54. New Audio Video's conduct constitutes fraud, suppression and/or concealment, and misrepresentation of material facts known to it, with the intent of inducing reliance and thereby depriving Core Brands of property and/or legal rights or otherwise causing injury. New Audio Video's conduct subjects Core Brands to cruel and unjust hardship in conscious disregard of Core Brands's rights, such as to constitute malice, oppression, or fraud under California Civil Code § 3294, thereby entitling Core Brands to an award of exemplary and punitive damages in an amount appropriate to punish or set an example of New Audio Video.

WHEREFORE, Core Brands requests that this Court:

A. Preliminarily and permanently enjoin New Audio Video, including all partners, officers, agents, servants, employees, attorneys, and all those persons and entities in active concert or participation with it, from:

   a. using the Core Brands Marks or any mark confusingly similar to the Core Brands Marks, whether alone or in combination with other words or symbols;

b. acquiring, or taking steps to acquire, any Core Brands Products, including but not limited to, ATON, BlueBOLT, ELAN, Furman, Korus, Niles, Panamax, Proficient, SpeakerCraft, Sunfire, or Xantech in violation of Core Brands's Authorized Reseller Agreements, or through any other improper or unlawful channels;

c. selling, listing, promoting, advertising, displaying, offering for sale, shipping, or taking any steps to sell, list promote, advertise, display, offer for sale, or ship any Core Brands Products including but not limited to ATON, BlueBOLT, ELAN, Furman, Korus, Niles, Panamax, Proficient, SpeakerCraft, Sunfire, or Xantech;

d. inducing, assisting, or abetting any other person or entity in engaging in or performing any of the activities described in the paragraphs above; and

e. engaging in any further infringement, unfair competition, false advertising, and/or unfair trade practices.

B. Direct New Audio Video to pay Core Brands the actual damages and profits realized by New Audio Video, and the costs and attorneys' fees incurred in pursuit of this action pursuant to 15 U.S.C. § 1117(a), California Business & Professions Code §§ 17200, *et seq.* or otherwise.

C. Enter judgment that New Audio Video's acts of infringement and unfair business practices have been knowing and willful.

D. Award Core Brands treble damages, exemplary or punitive damages, and attorneys' fees pursuant to 15 U.S.C. § 1117(b) or California Business & Professions Code §§ 17200, *et seq*.

E. Order the recall, impounding and destruction of all goods, advertising or other items infringing upon Core Brands's trademark rights pursuant to 15 U.S.C. § 1118, or otherwise.

F. Award Core Brands such further relief as this Court may deem just and proper.

JURY TRIAL CLAIM

Core Brands claims a trial by jury on all issues so triable.

K&L GATES LLP

Dated: May 5, 2017

By: /s/ Caitlin C. Blanche
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